

United States District Court  
for the  
Southern District of New York  
Related Case Statement

---

Full Caption of Later Filed Case:

In re Navient Solutions, LLC  
Alleged Debtor

LaBarron Tate, Sarah Bannister, Brandon Hood  
(Petitioning Creditors)

Plaintiff

Case Number

vs.

21-10249 (S.D.N.Y. Bankr.)

---

Navient Solutions, LLC  
(Respondent)

Defendant

Full Caption of Earlier Filed Case:

(including in bankruptcy appeals the relevant adversary proceeding)

LaBarron Tate, Sarah Bannister, Brandon  
Hood (Plaintiffs)

Plaintiff

Case Number

vs.

20-cv-4458 (MKV)

---

Steven T. Mnuchin, in his official capacity as the  
Secretary of the Treasury, The United States  
Treasury Department, in its sovereign capacity,  
Brian P. Brooks, in his official capacity as the acting  
Comptroller of the Currency (Defendants)

Defendant

Status of Earlier Filed Case:

☐

Closed

(If so, set forth the procedure which resulted in closure, e.g., voluntary dismissal, settlement, court decision. Also, state whether there is an appeal pending.)

☒

Open

(If so, set forth procedural status and summarize any court rulings.)

Pending motion to dismiss by Defendants - No ruling

Explain in detail the reasons for your position that the newly filed case is related to the earlier filed case.

On June 11, 2020, three student loan borrowers named LaBarron Tate, Sarah Bannister and Brandon Hood ("Student Loan Borrowers") commenced a first-filed action in this Court against the government defendants arising from, inter alia, the unlawful servicing of their student loans by Navient Solutions, LLC ("Navient"), a servicing entity that has contracted with the government and is subject to the supervision of and/or regulatory powers from the government defendants. On June 18, 2020, an amended complaint was filed. Student Loan Borrowers seek declaratory relief and equitable relief, such as to void and/or discharge their student loans arising from, inter alia, Navient's unlawful servicing of their student loans in violation of federal law. The government defendants have filed a pending motion to dismiss opposed by Student Loan Borrowers.

On February 8, 2021, these same Student Loan Borrowers, in their capacity as Petitioning Creditors, commenced a second-filed, involuntary Chapter 11 bankruptcy case against Navient, as an alleged debtor, in this Court (which referred the case to a Bankruptcy Judge). The creditor claims of these same Student Loan Borrowers in the second-filed involuntary case, just like their claims in the first-filed pending case, are based upon the unlawful servicing of their student loans by Navient in violation of federal law -- with merits relief sought in the first-filed pending case against the government defendants based upon Navient's unlawful servicing of their student loans, and merits relief sought in the second-filed involuntary case against Navient itself based upon Navient's unlawful servicing of their student loans.

In both cases, the creditor claims for these same Student Loan Borrowers (a) concern the same or substantially similar parties, property, transactions or events involving, inter alia, the unlawful servicing of their student loans by Navient and (b) involve substantial factual overlap in connection with the unlawful servicing of their student loans by Navient.

Pursuant to rulings on February 25, 2021, March 8, 2021 and March 12, 2021 in the second-filed lawsuit, the Bankruptcy Judge dismissed the involuntary case against Navient on a pre-answer motion, and declined to reconsider such dismissal, without having afforded Student Loan Borrowers any opportunity for discovery or to participate in a trial on the merits of the factual allegations set forth in the involuntary petition and the executed supplement with exhibits thereto. The Bankruptcy Judge also declined to allow any other unsecured creditors holding claims against Navient, such as a nationwide group of other student loan borrowers, to proceed as attempted Joinder Creditors, and also denied these other student loan borrowers any opportunity for discovery or to participate in a trial on the merits. The Bankruptcy Judge also made a ruling, at the pre-answer stage, purporting to impose liability on Student Loan Borrowers and their counsel of record for having purportedly engaged in a "bad faith" filing of the involuntary case -- again without any opportunity for discovery, a merits trial, and even though (at the pre-answer stage) the factual allegations set forth in the involuntary petition and the executed supplement with exhibits thereto, are deemed to be true, all plausible inferences therefrom must be drawn in favor of Student Loan Borrowers and against Navient, and Navient introduced facts outside Student Loan Borrowers' pleadings without having converted the motion to dismiss into a motion for summary judgment. Student Loan Borrowers appeal from all of the adverse, pre-answer, rulings by the Bankruptcy Judge. Counsel of record for Student Loan Borrowers in the second-filed involuntary bankruptcy case, who is also counsel of record for Student Loan Borrowers in the first-filed pending case, has also appealed from the adverse bad faith rulings by the Bankruptcy Judge at the pre-answer stage.

Signature:

/s Austin C. Smith

Date: 3/26/2021

Firm:

Smith Law Group LLP

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Bankruptcy Appeal: Appellants LaBarron Tate, Sarah Bannister and Brandon Hood (and, where applicable, their counsel of record Austin C. Smith, Esq. and his law firm of Smith Law Group LLP)  
ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
Smith Law Group LLP, 3 Mitchell Place, NY, NY 10017, Att: Austin C. Smith, Esq., Tel: 917-992-2121

DEFENDANTS

Appellee and Alleged Involuntary Debtor: Navient Solutions, LLC

ATTORNEYS (IF KNOWN)

Kirkland & Ellis LLP, 601 Lexington Ave., NY, NY 10022, Att: Stephen Hessler, Esq., Tel: 212-446-4800 -and-  
McGuireWoods LLP, 600 Travis St., Suite 6500, Houston, TX 77022, Att:

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)  
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

11 U.S.C. 303 and Bankruptcy Appeal under the Federal Rules of Bankruptcy Procedure involving an Involuntary Chapter 11 bankruptcy ca

Has this action, case, or proceeding, or one essentially the same been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously Assigned

If yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date \_\_\_\_\_ & Case No. \_\_\_\_\_

IS THIS AN INTERNATIONAL ARBITRATION CASE?

No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- [ ] 110 INSURANCE  
[ ] 120 MARINE  
[ ] 130 MILLER ACT  
[ ] 140 NEGOTIABLE INSTRUMENT  
[ ] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT  
[ ] 151 MEDICARE ACT  
[ ] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)  
[ ] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS  
[ ] 160 STOCKHOLDERS SUITS  
[ ] 190 OTHER CONTRACT  
[ ] 195 CONTRACT PRODUCT LIABILITY  
[ ] 196 FRANCHISE

PERSONAL INJURY

- [ ] 310 AIRPLANE  
[ ] 315 AIRPLANE PRODUCT LIABILITY  
[ ] 320 ASSAULT, LIBEL & SLANDER  
[ ] 330 FEDERAL EMPLOYERS' LIABILITY  
[ ] 340 MARINE  
[ ] 345 MARINE PRODUCT LIABILITY  
[ ] 350 MOTOR VEHICLE  
[ ] 355 MOTOR VEHICLE PRODUCT LIABILITY  
[ ] 360 OTHER PERSONAL INJURY  
[ ] 362 PERSONAL INJURY - MED MALPRACTICE

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- [ ] 440 OTHER CIVIL RIGHTS (Non-Prisoner)  
[ ] 441 VOTING  
[ ] 442 EMPLOYMENT  
[ ] 443 HOUSING/ ACCOMMODATIONS  
[ ] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT  
[ ] 446 AMERICANS WITH DISABILITIES - OTHER  
[ ] 448 EDUCATION

PERSONAL INJURY

- [ ] 367 HEALTHCARE/ PHARMACEUTICAL PERSONAL INJURY/PRODUCT LIABILITY  
[ ] 365 PERSONAL INJURY PRODUCT LIABILITY  
[ ] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- [ ] 370 OTHER FRAUD  
[ ] 371 TRUTH IN LENDING

PRISONER PETITIONS

- [ ] 463 ALIEN DETAINEE  
[ ] 510 MOTIONS TO VACATE SENTENCE  
28 USC 2255  
[ ] 530 HABEAS CORPUS  
[ ] 535 DEATH PENALTY  
[ ] 540 MANDAMUS & OTHER

PRISONER CIVIL RIGHTS

- [ ] 550 CIVIL RIGHTS  
[ ] 555 PRISON CONDITION  
[ ] 560 CIVIL DETAINEE CONDITIONS OF CONFINEMENT

FORFEITURE/PENALTY

- [ ] 625 DRUG RELATED SEIZURE OF PROPERTY  
21 USC 881  
[ ] 690 OTHER

PROPERTY RIGHTS

- [ ] 820 COPYRIGHTS  
[ ] 830 PATENT  
[ ] 835 PATENT-ABBREVIATED NEW DRUG APPLICATION  
[ ] 840 TRADEMARK

LABOR

- [ ] 710 FAIR LABOR STANDARDS ACT  
[ ] 720 LABOR/MGMT RELATIONS  
[ ] 740 RAILWAY LABOR ACT  
[ ] 751 FAMILY MEDICAL LEAVE ACT (FMLA)  
[ ] 790 OTHER LABOR LITIGATION  
[ ] 791 EMPL RET INC SECURITY ACT (ERISA)

IMMIGRATION

- [ ] 462 NATURALIZATION APPLICATION  
[ ] 465 OTHER IMMIGRATION ACTIONS

BANKRUPTCY

- ☒ 422 APPEAL  
28 USC 158  
[ ] 423 WITHDRAWAL  
28 USC 157

SOCIAL SECURITY

- [ ] 861 HIA (1395ff)  
[ ] 862 BLACK LUNG (923)  
[ ] 863 DIWC/DIWW (405(g))  
[ ] 864 SSID TITLE XVI  
[ ] 865 RSI (405(g))

FEDERAL TAX SUITS

- [ ] 870 TAXES (U.S. Plaintiff or Defendant)  
[ ] 871 IRS-THIRD PARTY  
26 USC 7609

OTHER STATUTES

- [ ] 375 FALSE CLAIMS  
[ ] 376 QUI TAM  
[ ] 400 STATE REAPPORTIONMENT  
[ ] 410 ANTITRUST  
[ ] 430 BANKS & BANKING  
[ ] 450 COMMERCE  
[ ] 460 DEPORTATION  
[ ] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)  
[ ] 480 CONSUMER CREDIT  
[ ] 485 TELEPHONE CONSUMER PROTECTION ACT  
[ ] 490 CABLE/SATELLITE TV  
[ ] 850 SECURITIES/ COMMODITIES/ EXCHANGE  
[ ] 890 OTHER STATUTORY ACTIONS  
[ ] 891 AGRICULTURAL ACTS  
[ ] 893 ENVIRONMENTAL MATTERS  
[ ] 895 FREEDOM OF INFORMATION ACT  
[ ] 896 ARBITRATION  
[ ] 899 ADMINISTRATIVE PROCEDURE ACT/REVIEW OR APPEAL OF AGENCY DECISION  
[ ] 950 CONSTITUTIONALITY OF STATE STATUTES

Check if demanded in complaint:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y. AS DEFINED BY LOCAL RULE FOR DIVISION OF BUSINESS 13?  
IF SO, STATE:

DEMAND \$ \_\_\_\_\_ OTHER \_\_\_\_\_ JUDGE Hon. Mary Kay Vyskocil DOCKET NUMBER 20-cv-4458

Check YES only if demanded in complaint  
JURY DEMAND: ☐ YES ☒ NO

NOTE: You must also submit at the time of filing the Statement of Relatedness form (Form IH-32).

Pg 4 of 4  
ORIGIN

(PLACE AN x IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation (Transferred)
 ☐ 7 Appeal to District Judge from Magistrate Judge
 ☐ 8 Multidistrict Litigation (Direct File)
- ☒ a. all parties represented
 ☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

## BASIS OF JURISDICTION

IF DIVERSITY, INDICATE  
CITIZENSHIP BELOW.

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☒ 3 FEDERAL QUESTION
 ☐ 4 DIVERSITY
- (U.S. NOT A PARTY)

## CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF [ ] 1 DEF [ ] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [ ] 3 [ ] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [ ] 5 [ ] 5
CITIZEN OF ANOTHER STATE	[ ] 2 [ ] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[ ] 4 [ ] 4	FOREIGN NATION	[ ] 6 [ ] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

## COURTHOUSE ASSIGNMENT

I hereby certify that this case should be assigned to the courthouse indicated below pursuant to Local Rule for Division of Business 18, 20 or 21.

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN

DATE March 26, 2021

SIGNATURE OF ATTORNEY OF RECORD

/s Austin C. Smith

RECEIPT #

ADMITTED TO PRACTICE IN THIS DISTRICT

[ ] NO

☒ YES (DATE ADMITTED Mo. 6 Yr. 2016)

Attorney Bar Code # 2983

Magistrate Judge is to be designated by the Clerk of the Court.

Magistrate Judge \_\_\_\_\_ is so Designated.

Ruby J. Krajick, Clerk of Court by \_\_\_\_\_ Deputy Clerk, DATED \_\_\_\_\_.

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

Class Form

Save

Print